

I submit that a court must be careful before admitting a statement made by a juvenile, and in exercising this care the court ought to require proof to its satisfaction that the juvenile understood the seriousness of his position and the significance of what he was to say. Such evidence would have to be stronger if the juvenile is mentally defective. In order to exercise this care the Crown ought to be required to show that the juvenile's parents were offered an opportunity to be present during his questioning by the police.

I do not suggest that presence of parents is an absolute requirement for the admission of a statement. Such a requirement is in the same position as a caution. The *Boudreau* case made it clear that a caution is not essential to the admission of a statement. Yet it is still an important factor. Our courts will often reject statements given in the absence of evidence of a prior caution. That the presence of parents is in the same position as the requirement of a caution is clear from the part of the caution which states that the accused need not say anything. Both are designed to ensure the understanding of the accused's rights. If then, in any case the parents were not present, it is submitted that the Crown must clearly demonstrate that the juvenile understood his position.

One often hears the Crown attempt to justify the extension of rules of admission of evidence under the pretext that it is necessary to investigate crimes and ascertain the truth. Nevertheless, it is submitted that our courts must ever protect the liberty of the subject, so that justice will be done every time, not just most of the time.

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RECENT CHANGES IN THE STATUS OF MARRIED WOMEN IN QUEBEC

Another phase of the internal "revolution" taking place within the Province of Quebec, Bill 16, sometimes called the "emancipator" of the Quebec woman, became law on July 1, 1964. The objective of the Bill was to give the married women of the province a greater legal capacity, relative to their husbands, than they had previously enjoyed. The extent of the changes made by the Bill will be the subject of this discussion.

Essentially, Bill 16 is concerned with the legal capacity of married women in three areas: care and raising of the family; private property of married women, and the right of married women to have independent jobs and salaries. In the first of these, the care and maintenance of the family, much needed changes have been implemented by the Bill.

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Whereas Article 174 of the Quebec Civil Code formerly read that a wife owed obedience to her husband, the amended Article 174 states that the husband and wife participate jointly in managing family affairs and raising the children. Where the husband, through illness, absence or incapacity is unable to take part in any decision as regards his family, the mother now has the legal capacity to exercise such a decision alone. Thus, for example, she may now give permission for a medical operation for her children if her husband is unavailable or unable to render his consent. Previously, even in grave situations, the mother was unable to give such a decision in her husband's absence without a special court order, and there have been cases of doctors frantically searching for the father, so that his permission might be given to operate on one of his children, while the mother waited helplessly at the hospital.

By the amended Article 180 the wife is automatically deemed to be the agent of her husband, enabling her now to pledge her husband's credit for family and household necessities. Previously, only the husband was allowed to pledge the family credit, and a wife wishing to do the same was required to receive her husband's permission. However, even under the new Article, the husband will not be bound if he revokes her authority to pledge his credit, and third parties have knowledge of this revocation.

In managing the family, however, the wife is still bound by Article 175, which states that a wife must live with her husband and "follow him" to wherever he chooses to take up his residence. A qualification has been added by the Bill, however. Now, if a wife can prove that the husband's choice of residence subjects the family to a danger of a "moral" or "physical" nature, she may petition a judge of the Superior Court for permission not to so follow her spouse.

To understand the other two main areas with which Bill 16 deals—the married woman's private property, and her right to be an independent public trader—requires a brief discussion of the Quebec Civil Code principle of the matrimonial regime. Before a couple is married, they may, if they so desire, draw up a marriage contract, which, in effect, states the way in which the separate property of the individual partners is to be administered. There is, therefore, the possibility of many forms of contracts, ranging from complete amalgamation, to total separation of property. The type of marriage contract formed thus determines the nature of the matrimonial regime and how property of the individual spouses is to be administered.

The making of a marriage contract has, however, always been optional. The vast majority of couples in Quebec, because of social convention and religious teachings, have not formed such a contract. When there is no contract created prior to marriage, the husband and wife automatically, by law, are placed under the regime of community of property, in which their respective property is held in common (or community), but which is administered solely by the husband. At present, the majority of married

persons in the province hold their property under the regime of community of property.

Before the passage of Bill 16, the husband was the sole administrator of the community property. He possessed the legal power to sell, alienate or handle the property in any manner he saw fit, his wife's consent being unnecessary. The only restriction placed on him was in making gifts *inter vivos* of the community property (both movable and immovable), in which case his wife's consent was required unless the gift were for their common children. Finally, the law imposed somewhat of a restriction by way of dower requirements. The wife was guaranteed the use of a minimum of one half of the immovable community property existing at the time of the marriage and one half of any immovables obtained during marriage. Any wife who had reached her majority, however, could relinquish her dower rights, thereby giving her husband virtually absolute control over the whole of the community property, and his wife's future.

Under the amended Article 1292, the community property is still administered solely by the husband. However, a real restriction is placed on his administrative powers by paragraph 2 of Article 1292, which states that the husband requires the wife's consent to "sell, alienate or hypothecate" any immovable property of the community. He may, though, without his wife's consent, "sell, alienate or pledge any movable property other than a business or than household furniture in use by the family." The basic effect of the amended Article 1292, then, is to insure the wife some control over the immovable community property, other than the negative control she possessed by way of the Code's dower provisions.

Not only the regime of community of property has been effected by the Bill. Indeed, it is in the other regimes that the Bill succeeds in giving the married woman truly equal legal capacity with her husband. Thus the amended Article 1422 now reads that if the marriage contract has stipulated separation of property, the wife is free to administer, partition, sell, or deal with in any manner she so chooses, all her immovable and movable property. Under the old Article 1422, the wife could not alienate, without her husband's authorization, her immovable property, even when the marriage contract called for separation of property; nor could she accept a gift of immovable property without his consent. Finally, the amended Article 1425(a) of the Code gives a wife not only the administration, but also the enjoyment and free disposal of her reserved property, namely of the proceeds of her personal work, and the economics therefrom and the movable or immovable property acquired by investing the same. The remaining restriction is under the regime of community of property, in which case the wife cannot alienate her property by gratuitous title without her husband's consent.

The right of a married woman to operate an independent business is given by the amended Article 180 of the Civil Code. Previously, the wife had to obtain her husband's permission before she was able to operate a separate business. Under this new provision, if there is separation as to

property, the wife alone is responsible for any debts she incurs in the course of her business. Under the regime of community of property, the husband is automatically liable for all debts that relate to her trade, unless he opposes her being an independent public trader, and third parties have notice of such opposition. However, notwithstanding the husband's opposition, a judge of the Superior Court may order that he shall be liable for debts incurred by the wife's trade, if the wife can show that such opposition has no justification.

Looked at in perspective, what is the effect of Bill 16 in raising the legal capacity of the married woman in Quebec? It has given her legal capacity on par with her husband in the caring for and raising of the family, and in maintaining the household. The matrimonial regime of separation of property may now be called truly "separate", with the wife free to do with her private property as she chooses. Unfettered from the bond of her husband's consent, she is now at liberty to "engage in a calling separate from that of her husband". It is in these areas that the Bill has given the married woman of Quebec equal legal capacity with her husband, and has placed her on a comparable level with the women of Canada's nine other provinces.

However, as previously noted, the majority of property held by married couples falls within the regime of community of property; and it is this regime which has been least affected by the Bill. Although the wife's approval is now required for the selling or disposing of the immovable community property, the husband yet retains absolute control over the administration of the community property. Further, he may freely dispose of any movable property, subject to the exceptions noted above. A married woman living under the regime of community of property still cannot accept a succession without her husband's consent or judicial authorization; she must yet obtain his approval to make or accept gifts *inter vivos*, and to accept testamentary executorship. Despite Bill 16, the husband remains (at least according to law) the head of the family for the vast majority of Quebec domestic establishments.

There can be no disagreement that Bill 16 has succeeded in raising the legal capacity of the Quebec married woman to a level more in tune with the standards of modern society. She is no longer regarded as someone simply owing obedience to her husband, but as a partner in marriage, with rights and privileges of her own. Complete equality of legal capacity is still lacking in the regime of community of property, but even there a fundamental change in attitude is apparent. If there is not yet total equality of legal capacity, a solid base has nevertheless been laid.

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